

STATE BUILDING CODE TECHNICAL REVIEW BOARD
MEETING

October 16, 2015

RICHMOND, VIRGINIA

Members Present

Mr. J. Robert Allen, Chairman
Mr. W. Keith Brower
Mr. J. Daniel Crigler
Mr. James R. Dawson
Mr. John H. Epperson, PE
Mr. John A. Knepper
Mr. Eric Mays
Ms. Joanne D. Monday
Ms. Patricia S. O'Bannon
Mr. W. Shaun Pharr, Esq.

Members Absent

Mr. Matthew Arnold
Mr. Vince Butler
Mr. Alan D. Givens
Mr. Joseph A. Kessler, III

Call to Order

The meeting of the State Building Code Technical Review Board ("Review Board") was called to order by the Chairman at approximately 10:00 a.m.

Roll Call

The attendance was established by Mr. Alan W. McMahan, Acting Secretary, and constituted a quorum. Mr. Justin I. Bell, Assistant Attorney General in the Office of the Attorney General, was present and serving as the Board's legal counsel.

Approval of Minutes

Mr. Epperson moved to approve the minutes of the August 21, 2015 meeting as presented in the Review Board members' agenda package. The motion was seconded by Ms. Monday and passed unanimously with Messrs. Brower and Crigler abstaining from the vote.

Public Comment

The Chairman opened the floor for public comment. The Secretary reported that no one was preregistered. The Chairman closed the public comment period.

Final Orders

Appeal of John Thulin; Appeal No. 15-2

After consideration, Mr. Mays moved to approve the final order as presented in the Review Board members' agenda package. The motion was seconded by Ms. O'Bannon and passed unanimously with Messrs. Brower and Crigler abstaining from the vote.

Appeal of Joseph E. Ellis; Appeal No. 15-4:

After consideration, Mr. Mays moved to approve the final order as presented in the Review Board members' agenda package. The motion was seconded by Mr. Epperson and passed unanimously with Messrs. Brower and Crigler abstaining from the vote.

Appeal of Justin Verville; Appeal No. 15-11;

Before taking any action on the final order, Mr. Dawson moved to recess the meeting and reconvene in executive session as authorized by § 2.2-3711(A)(7) of the Code of Virginia. The motion was seconded by Mr. Brower and passed unanimously.

(Executive closed session duration was approximately twenty minutes.)

The Chairman stated that the board would reconvene in open session. The Secretary called the roll and each board member responded with "yes" to certify that to the best of their knowledge only public business matters lawfully exempted from open meeting requirements were discussed or considered and that only such public business matters as were identified in the motion by which the executive closed meeting was convened were heard, discussed or considered in the closed meeting.

Following the closed session and prior to any action on the final order by the Review Board, Mr. Mays read the following statement into the record:

Appeal of Justin Verville: Appeal No. 15-11 (cont'd.):

Mr. Chairman and members of the Board, I would like to read a statement for the record before we vote on the Final Order.

I am going to vote against the Final Order because it is fatally flawed.

The Final Order states on Page 18 and 19 of the Board's package: "The Review Board finds that the appellant's proposed use of the educational wing as a school and daycare represents a continued use, and not a change of occupancy as defined above, primarily due to a lack of a certificate of occupancy to indicate otherwise. Moreover, the historical documentation provided by the appellant demonstrated that the long accepted use of the educational wing for short-term child care.

I want to address the first statement. Factually, all parties agree there is no Certificate of Occupancy for the Church's Education Wing. However, to conclude that a school and daycare represent a continued use because there is no Certificate of Occupancy is simply flawed logic.

The second statement says: "Moreover, the historical documentation provided by the appellant demonstrated the long accepted use of the education wing for short-term child care." First, I must ask what is "short-term child care." In terms of the Building Code it is an undefined term that is not applicable or defensible. However, if you choose to accept the words "short-term child care" it is clearly not equivalent to the operation of a full time day care that is open 5 days per week up to 12 hours per day for 24 children. Second, I must state to the contrary that all the evidence provided by the appellant only proved that the Church's Education Wing was used for a Church Nursery; and it is critical to note that the Building Code is

Appeal of Justin Verville; Appeal No. 15-11 (cont'd.):

very clear that a Church Nursery and a Day Care are considered different uses with two different levels of required public safety. No evidence or testimony was provided to substantiate that a Day Care was ever operated in the Church's Education Wing. If a Board member or staff can identify actual evidence that a Day Care was operated in the Church' Education Wing for 24 children over its 50 year history, I will vote in support of the Final Order.

I also want to bring to the Board's attention that there is a recent appeal case for a similar historic building in the same jurisdiction. There was a building constructed in the 1800's by a community organization for meetings and social gatherings. The current owner wanted to use the upper floor for a Night Club; however, a Certificate of Occupancy did not exist. The Night Club owner advocated that it was not a Change of Use because the social gatherings clearly involved alcohol and dancing at some point in the building's history. This Board denied that Appeal and upheld the Building Official that the Night Club represented a Change of Use.

Based on the fatal flaws of the Final Order and the lack of evidence or testimony to substantiate that a fully operational day care for 24 children ever operated in the building, I do not believe the Final Order as drafted is defensible in a Court proceeding. I would like to make the following three requests:

- 1. I request that the Attorney General's Office comment on my statement and concerns.*
- 2. I request the Board to vote against the Final Order as drafted.*
- 3. I request the Board make a motion to reconsider the Board's decision and deliberate the facts of case.*

Appeal of Justin Verville; Appeal No. 15-11 (cont'd.):

Thank you for listening to my concerns; and thank you for your consideration."

After further consideration, Ms. Monday moved to approve the final order as presented in the Review Board members' agenda package.

The motion was seconded by Mr. Dawson and passed with Mr. Mays and Ms. O'Bannon voting in opposition and Messrs. Brower, Crigler, and Epperson abstaining from the vote.

New Business

Appeal of International Technology Industry, Inc. (ITI);
Appeal No. 15-10:

An appeal hearing convened with the Chairman serving as the presiding officer. The appeal concerned the issue of whether there was a change of use of a commercial building as alleged by the Fairfax County Fire Marshal's Office.

The following persons were sworn in and given the opportunity to present testimony:

Bill Wang, with ITI
Rocco Alvaro, Fairfax County Fire Marshal's Office
Trice Burgess, Fairfax County Fire Marshal's Office
John Walser, Fairfax County Fire Marshal's Office

Also present were:

J. Cathryn Watson, Esq., counsel for ITI

The following exhibit was submitted by Fairfax County to supplement the documents in the Review Board members' agenda package:

Exhibit A – two non-residential use permits, an arrest report, a narrative supplemental report and a case initiation report

Appeal of International Technology Industry, Inc. (ITI);
Appeal No. 15-10 (cont'd.):

The Chairman ruled the exhibit out-of-order since it was not relevant to the specific issues under appeal.

During testimony, Fairfax County offered color versions of the black and white photos provided in the agenda package. The photos were accepted by the Chairman with agreement by ITI and were distributed to the Review Board members.

After testimony concluded, the Chairman closed the hearing and stated a decision from the Review Board members would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision – Appeal of International Technology Industry, Inc. (ITI);
Appeal No. 15-10:

After deliberation, Mr. Brower moved to uphold the decision of the Fairfax County Fire Marshal's Office that a violation of Statewide Fire Prevention Code Section 301.3 (Occupancy) exists in the commercial building owned by ITI. The motion was seconded by Mr. Dawson and passed unanimously.

Secretary's Report

The Acting Secretary provided to the Review Board members an update on the tentative schedule for upcoming meetings, and notified Review Board members that the conflict of interest training scheduled for the meeting had been rescheduled due to pending changes in the Conflict of Interest Act and its related training. Mr. Bell provided Review Board members with an update concerning recent circuit court decisions. Mr. McMahan then discussed with the Review Board members the language in its bylaws concerning appointment of a Board Secretary. Consequently, Mr. Epperson moved to appoint Mr. McMahan as Secretary to the Review Board. The motion was seconded by Mr. Crigler and passed unanimously.

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Adjournment

There being no further business, the meeting was adjourned by motion of Ms. Monday at approximately 1:42 p.m.

Approved: February 19, 2016

/s/

Chairman, State Building Code Technical Review Board

/s/

Secretary, State Building Code Technical Review Board